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April 3, 2019

**VIA EMAIL (david.stark@psc.sc.gov)**

David W. Stark, III, Esquire  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

RE: Stephen and Beverly Noller and Michael and Nancy Halwig v. Daufuskie  
Island Utility Company, Inc.

**Docket No.: 2018-364-WS**

NMRS File Nos.: 054041/09000; 055561/09000

Dear Mr. Stark:

As you have requested, this letter provides a summary status report to you and the Public Service Commission on the efforts of Complainants in the above-referenced case to settle this case with Daufuskie Island Utility Company, Inc. following the stated agreement in principle to settle at the hearing on jurisdiction before the Public Service Commission on March 20, 2019. This letter also constitutes Complainants' request for mediation of the remaining issues in the settlement in hopes of achieving the settlement as stated at the conclusion of the jurisdictional hearing.

Complainants provided a draft settlement consent order to DIUC on March 21, 2019 and received comments and revisions the next day. Both parties continued revising positions and offering draft consent agreements until Tuesday, March 26. Complainants were informed the DIUC version offered on March 26<sup>th</sup> was not negotiable. When a few revisions were offered the next day by Complainants, instead of accepting the DIUC draft as presented, DIUC reported a failure in the negotiations to the PSC and ORS. A call was scheduled and held by you as Hearing Officer for Friday March 29<sup>th</sup>, with counsel for ORS, Complainants and DIUC participating.

Because the negotiations between Complainants and DIUC were for settlement, the particular terms and issues preventing settlement as of the 26<sup>th</sup> cannot be divulged without consent of both parties. Complainants suggested the last versions from each party be submitted to the ORS, consenting to such disclosure in an effort to finalize the agreement in principle stated at the jurisdictional hearing. DIUC did not respond to this suggestion, but instead informed the PSC that negotiations had failed and requested a

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decision on jurisdiction, clearly not consenting to any disclosure of settlement terms or issues remaining between the parties. Therefore, the status call with all counsel that you scheduled did not indicate what the issues were preventing the settlement in principle from being finalized. However, DIUC did disclose on the status call that it did stop its counsel from further negotiating the settlement, indicating it did not want to expend more money on it. In addition, DIUC stated that the Halwig home was for sale, that the service lines to the home were exposed, and that it would be sending a letter to the Halwigs providing that action to protect the lines had to be taken within thirty (30) days or service would be cut off. It appeared to Complainants these were offered to explain why negotiations were stopped.

Counsel for Complainants noted in response that the Halwigs were aware of the erosion issue at their home and had asked for and received permission from OCRM to take action, but had not located a contractor who could perform the work very quickly. Counsel also reminded Mr. Stark that the renourishment permit for the Resort is still a possible remedy for the erosion as is the process engaged by the Halwigs with OCRM for repair of their oceanfront bulkhead. The Resort also is involved in such renourishment and bulkhead issues. These issues are not in the Commissions' jurisdiction, but DIUC has raised them and attempted to insert them as an issue in its defense since Complainants first filed their Complaint.

Complainants believe the two issues remaining to resolve when negotiations were stopped by DIUC could be negotiated and a final consent order for the agreement in principle reached if negotiations continued. In light of the DIUC position, Complainants seek a mediation with ORS to assist in finalizing the settlement in principle with DIUC in a final order for the Commission's consideration.

Thank you for the opportunity to provide this report. I would appreciate your filing it at your convenience. I am serving all counsel upon transmittal of this letter to you by email.

With best regards, I am

Very truly yours,



Newman Jackson Smith

NJS:mam

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